



Billing Code 4310–55–P

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[FWS– R8–ES–2013–0079]**

**[4500030113]**

**RIN 1018–AZ12**

**Endangered and Threatened Wildlife and Plants; 12-Month Finding and Candidate Removal for *Potentilla basaltica*; Proposed Threatened Species Status for *Ivesia webberi***

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** 12-month petition finding; proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plant *Potentilla basaltica* (Soldier Meadow cinquefoil) as an endangered or threatened species. After review of the best available scientific information, we find that listing *Potentilla basaltica* as an endangered or threatened species under the Endangered Species Act (Act) is no longer warranted, and, therefore, we are removing this species from the candidate list. We propose to list the plant *Ivesia webberi* (Webber's ivesia) as a threatened species under the Act. If finalized, the effect of this regulation would be to add *Ivesia webberi* to the List of Endangered and Threatened Plants and extend the Act's protections to this species. Elsewhere in today's **Federal Register**, we propose to designate critical habitat under the Act for *Ivesia webberi*.

**DATES:** We will accept comments received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Public meeting:* We will hold a public meeting on this proposed rule on September 10, 2013, in Reno, NV, from 4:00 to 6:00 p.m. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Jeannie Stafford,

Nevada Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments

Processing, Attn: FWS–R8–ES–2013–0079; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM;

Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Edward D. Koch, State Supervisor,  
U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial

Boulevard, Suite 234, Reno, NV 89502, by telephone 775–861–6300, or by facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION**

### **Executive Summary**

*Why we need to publish a rule.* Under the Act, if we find a species to be endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a final determination on our proposal within 1 year. We designate critical habitat to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

*What this rule does.* We propose the listing of *Ivesia webberi* (Webber's ivesia) as a threatened species. *Ivesia webberi* is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher-priority listing activities. This rule reassesses all currently available information regarding status of and threats to *I. webberi*. Elsewhere in today's **Federal Register**, we propose to designate critical habitat for *I. webberi* under the Act.

*The basis for our action.* Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We find *Ivesia webberi* is subject to the present or threatened destruction, modification, or curtailment of its habitat (Factor A) from the following: Nonnative, invasive plants; modified fire regime (increased wildfire); OHV use and roads; development; livestock grazing; and climate change.

*We will seek peer review.* We are seeking all comments, including those from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal for *Ivesia webberi*. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *Ivesia webberi* Species Report available at [www. regulations.gov](http://www.regulations.gov) (Docket Number FWS–R8–ES–2013–0079). A summary of this analysis is found within this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

## Information Requested

### *Public Comments*

We intend that any final action resulting from this proposed rule for *Ivesia webberi* will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) *Ivesia webberi*'s biology, distribution, population size and trend, including:

- (a) Habitat requirements for pollination, reproduction, and dispersal;
- (b) Genetics and taxonomy;
- (c) Historical and current range including distribution patterns;
- (d) Historical and current population levels, and current and projected trends; and
- (e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); or
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not

be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments **only** by the methods described in the **ADDRESSES** section.

If you submit information via *<http://www.regulations.gov>*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *<http://www.regulations.gov>*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *<http://www.regulations.gov>*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).



### *Public Hearing*

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

### *Peer Review*

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding the *Ivesia webberi* proposed rule. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *Ivesia webberi* Species Report available at <http://www.regulations.gov> (Docket Number FWS–R8–ES–2013–0079). A summary of this analysis is found within this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. A peer review panel will conduct an assessment of the

proposed rule and the specific assumptions and conclusions regarding the proposed listing. This assessment will be completed during the public comment period.

## **12-Month Petition Finding and Candidate Withdrawal for *Potentilla basaltica***

This section summarizes the information on species status and potential threats that we evaluated in order to determine that listing *Potentilla basaltica* is not warranted and to remove it from candidate status. A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and potential threats—is presented in the *P. basaltica* (Soldier Meadow Cinquefoil) Species Report (Service 2013a, entire), which is available at <http://www.regulations.gov> (in the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking).

The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); or
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

We discuss the potential threats related to each factor below.

We identified *Potentilla basaltica* as a candidate in the June 13, 2002, Candidate Notice of Review (CNOR, 67 FR 40657). At the time, our assessment was that the species was being impacted by the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from the primary threats of heavy recreational use, OHV activity, and livestock grazing at Soldier Meadow. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. *Potentilla basaltica* was included in all subsequent annual CNORs (69 FR 24875, May 4, 2004; 70 FR 24869, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009; 75 FR 69221, November 10, 2010; and 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012). On May 11, 2004, we received a petition to list a total of 225 plant and animal species from the list of candidate species, including *P. basaltica*. Because we previously found that *P. basaltica* was warranted for listing, no further action was taken on the petition. When it was first identified as a candidate in 2002, we assigned *P. basaltica* a listing priority number (LPN) of 5, reflecting a species with threats that were considered high in magnitude but nonimminent. In 2006 (71 FR 53756), we changed the LPN to 11, reflecting a species with threats that were considered moderate to low in magnitude and nonimminent. The LPN for *P. basaltica* remained at 11 in 2007 (72 FR

69034), 2008 (73 FR 75176), 2009 (74 FR 57804), 2010 (75 FR 69222), 2011 (76 FR 66370), and 2012 (77 FR 69993).

*Potentilla basaltica* is a low-growing, perennial forb in the Rose family (Rosaceae) that forms a basal rosette with low-growing stems and small, yellow flowers. This species has a limited geographic range and is known to occur on approximately 22.7 acres (ac) (9.2 hectares (ha)) of habitat at Soldier Meadow in Humboldt County, Nevada, and Ash Valley in Lassen County, California (Service 2013x, p. x). Habitat conditions occupied by the species differ between these two locations. At Soldier Meadow, *P. basaltica* occurs in or near alkali meadows, seeps, and marsh habitats bordering perennial thermal springs, outflows, and meadow depressions, while in Ash Valley, *P. basaltica* occurs between the floodplain of Ash Creek and the sagebrush steppe (Service 2013x, p. x). At these two locations, *P. basaltica* is known from a total of three populations (two in Soldier Meadow and one in Ash Valley), each of which is located primarily on public lands managed by the Bureau of Land Management (BLM; 95 percent). The only available estimates of abundance suggest a combined total of between 75,950 and 133,614 individual plants across all three populations, with most of these individuals occurring at the two populations in Soldier Meadow in Nevada (74,950 to 132,000 individuals) (Service 2013a, p. 10).

Impacts to *Potentilla basaltica* and its habitat identified at the time it was determined to be a candidate species in 2002—recreational use, livestock grazing, roads and off-highway vehicle (OHV) activity, geothermal exploration, and nonnative, invasive

plant species—have been substantially reduced since 2002. The BLM implemented several measures that have been effective in reducing recreational use impacts to *P. basaltica* in Soldier Meadow: Establishing a designated, centralized campground, which discourages dispersed camping in wet meadow habitats where *P. basaltica* occurs; designating walkways away from *P. basaltica* habitat; installing interpretive signs informing recreationists about the sensitive plant and animal species found in the wetland and thermal spring habitats of Soldier Meadow; and use of a campground host in Soldier Meadow who interacts with visitors informing them of designated camping and bathing areas and providing education about the sensitive plant and animal species present in the area (Service 2013a, p. 18).

Other impacts to *Potentilla basaltica* also have been greatly reduced since 2002. In 2004, the areas where *P. basaltica* occurred in Soldier Meadow were fenced to exclude domestic livestock, wild horses, and other large ungulates; this initiative significantly reduced livestock grazing impacts to the species (Service 2013a, p. 20). In 2004, the BLM also closed roads (authorized and unauthorized) in Soldier Meadow that led to spring, riparian, and wetland areas and limited OHV use to designated roads and trails (Service 2013a, p. 15). These closures and OHV restrictions remain in place today and have effectively reduced impacts to *P. basaltica* from roads and OHVs. Within Soldier Meadow, BLM personnel coordinate efforts to detect and rapidly respond to nonnative, invasive plant species using chemical control and other treatment methods (Service 2013a, pp. 19–20). Geothermal exploration occurred in the Soldier Meadow area during the 1970s. Portions of Soldier Meadow *P. basaltica* population areas were protected

from exploration and development activities in 1982 when the BLM designated the area as an Area of Critical Environmental Concern (ACEC). In 2003, the BLM expanded the existing Soldier Meadow ACEC to provide additional protection for the desert dace (*Eremichthys acros*), which was listed as threatened under the Act in 1985, as well as to provide additional protection for *P. basaltica* (USFWS 1997, p. 22). The Soldier Meadow ACEC is also designated as a BLM Research Natural Area.

The Ash Valley, California, population, which occurs on a much smaller area and contains many fewer plants than the Soldier Meadow populations (Service 2013a, p. 10), is located in part on BLM lands designated as a Research Natural Area and ACEC and in part on private lands (Service 2013a, pp. 10–11). These BLM lands have been withdrawn from mining activity and are excluded from timber management and woodcutting activity (Service 2013a, p. 18). In 2008, the BLM issued a Record of Decision on the Alturas Resource Area Management Plan (RMP) and Final Environmental Impact Statement (BLM 2008a, pp. A-1–A-10). The RMP identified the need for establishing a long-term monitoring plot for *Potentilla basaltica* and limiting OHV travel to designated routes within the Ash Valley ACEC and Research Natural Area (BLM 2007, p. 2-105). And, if monitoring data suggested a decline in numbers or reproductive viability of *P. basaltica*, fencing would be constructed to exclude livestock grazing (BLM 2007, p. 2-106). The RMP also proposed the acquisition of private lands supporting unprotected populations of special status plants, including *P. basaltica* (BLM 2008a, p. 13).

In addition to evaluation of the threats identified at the time *Potentilla basaltica* was determined to be a candidate species, we also evaluated potential impacts of climate change on the species. Although climate change is likely to affect ecosystem function in Soldier Meadow and Ash Valley where *P. basaltica* occurs, we conclude that because of uncertainty about specific effects of climate change on *P. basaltica*, the best available scientific and commercial information does not indicate at this time that effects of climate change are likely to threaten the continued existence of *P. basaltica* now or in the foreseeable future (Service 2013a, pp. 22–23).

*Potentilla basaltica* is a BLM sensitive species (Service 2013a, p. 2). The stated objective for BLM sensitive species is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing (BLM 2008a, 6840.02). Conservation, as it applies to BLM sensitive species, is defined as “the use of programs, plans, and management practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species’ habitat on BLM-administered lands” (BLM 2008b, Glossary, p. 2).

*Potentilla basaltica* is not State listed as endangered or threatened in either Nevada or California. However, in California, *P. basaltica* has a California Native Plant Society (CNPS) rank of 1B.3 (not very threatened in California, with less than 20 percent of occurrences threatened and low degree and immediacy of threat or no current threats known) (CNPS 2013). Plants, like *P. basaltica*, with a CNPS 1.B rank must be fully

considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (CNPS 2013).

Based on our analysis of the five factors identified in section 4(a)(1) of the Act, we conclude that the previously recognized impacts to *Potentilla basaltica* from present or threatened destruction, modification, or curtailment of its habitat or range (Factor A)(recreational use; OHV use; introduction of nonnative, invasive plant species; and trampling by livestock), do not rise to a level of significance such that the species is in danger of extinction now or in the foreseeable future. We evaluated additional potential impacts under the the five listing factors stated above. In that evaluation we found that potential impacts such as livestock grazing (Factors A and E), geothermal exploration (Factors A and E), herbivory (Factor B), disease (Factor C), and climate change (Factor A) to either be of no concern or insignificant concern at this time. Additionally, conservation measures and protection provided by BLM for species associated with thermal springs are benefiting *P. basaltica*, and we anticipate these conservation measures and protections to continue to benefit *P. basaltica* into the foreseeable future (in part due to other sensitive and federally listed species occurring in these areas). Thus, the existing regulatory mechanisms are adequate to protect the species from the potential impacts (Factor D). See the “Factors Affecting the Species” section of the Species Report (Service 2013a, pp. 17–24) for a thorough discussion of all potential and current threats.



The best available information to assist us in assessing foreseeable future for *Potentilla basaltica* is the time period associated with management planning activities. Because the majority (95 percent) of *P. basaltica* occupied areas are on Federal lands that receive conservation protections resulting from Federal laws and the regulations and policies implementing those laws (i.e., Federal Land Policy Management Act, National Environmental Policy Act), we look to the historical timeframe for completing management plans and current planning efforts to assist us in defining foreseeable future. Based on this timeframe information, we estimate the foreseeable future to be at least 30 years (i.e., 2043) for this analysis. Therefore, we conclude that *P. basaltica* does not meet the definition of an endangered or threatened species and thus is no longer warranted for listing under the Act. With the publication of this notice, *P. basaltica* will be removed from the list of candidate species.

### **Proposed Threatened Species Status for *Ivesia webberi***

#### *Previous Federal Actions*

We identified *Ivesia webberi* as a candidate in the June 13, 2002, Candidate Notice of Review (CNOR, 67 FR 40657). *Ivesia webberi* was included in all subsequent annual CNORs (69 FR 24875, May 4, 2004; 70 FR 24869, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009; 75 FR 69221, November 10, 2010; and 76 FR 66370, October 26, 2011; 77 FR 69993, November 21, 2012). On May 11, 2004, we

received a petition to list a total of 225 plant and animal species from the list of candidate species, including *I. webberi*. Because we previously found the species was warranted for listing, no further action was taken on the petition. When it was first identified as a candidate in 2002 (67 FR 40657), we assigned *I. webberi* a listing priority number (LPN) of 5, reflecting a species with threats that were considered high in magnitude but nonimminent; the LPN remained at 5 in all subsequent CNORs.

### *Background*

In this and the following section, we summarize from information on species status and potential threats that we evaluated in order to determine that *Ivesia webberi* meets the Act's definition of a threatened species (section 3(20)). A thorough review of information that we relied on in making this determination—including information on taxonomy, life history, ecology, population distribution and abundance, and threats—is presented in the *Ivesia webberi* (Webber's ivesia) Species Report (Service 2013b, entire; available at <http://www.regulations.gov> (in the Search box, enter FWS–R8–ES–2013–0079, which is the docket number for this rulemaking)).

*Ivesia webberi* is a low, spreading perennial forb in the Rose family (Rosaceae) with grayish-green foliage, dark-red, wiry stems, and headlike clusters of small, yellow flowers. This species occupies vernal moist, rocky, clay soils with an argillic horizon that shrink and swell upon drying and wetting in open to sparsely vegetated areas associated with an *Artemisia arbuscula* (low sagebrush)–perennial bunchgrass–forb

community. The specialized soils are well developed, a process estimated to take 1,000 years. Limited seed dispersal and apparent limited recruitment further restrict the occupied range and distribution of *I. webberi*.

*Ivesia webberi* is currently known to occupy a total of approximately 165 ac (66.8 ha) within five counties in California and Nevada along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin (Service 2013b, p. 2). The species is known historically from a total of 17 populations, but 1 has been extirpated and a portion of another (1 of 4 subpopulations) is possibly extirpated. Of the remaining 16 populations, the status of 4 is unknown, and we currently are uncertain whether the species still persists at these locations (Service 2013b, p. 2). For the remaining 10 populations where the species' status is better understood, 6 occur on areas that are less than 5 ac (2 ha) each. Reliable estimation of population sizes or trends in *I. webberi* is complicated because past population estimates have usually been obtained by different observers employing a variety of methodologies and varying levels of survey effort (Service 2013b, p. 2).

#### *Summary of Biological Status and Threats*

Due to the restricted range, specialized habitat requirements, and limited recruitment and dispersal of *Ivesia webberi*, populations of this species are vulnerable to ongoing and future threats that affect both individual plants and their habitat. The primary threats to *I. webberi* are the additive and synergistic effects due to nonnative,

invasive plant species and modified fire regime (Service 2013b, pp. 31–32). Nonnative, invasive plant species, such as *Bromus tectorum* (cheatgrass), *Poa bulbosa* (bulbous bluegrass), and *Taeniatherum caput-medusae* (medusahead), have become established and are part of the associated plant community at 12 of the 16 extant populations of *I. webberi*. Nonnative, invasive plant species negatively affect *I. webberi* through competition, displacement, and degradation of the quality and composition of the *Artemisia arbuscula*–perennial bunchgrass–forb community in which *I. webberi* occurs. In addition to these effects, these nonnative, invasive plant species, once established, contribute fuels that increase the frequency and likelihood of wildfire in *I. webberi* habitat.

Wildfire was historically infrequent in the Great Basin because the native plant communities made up of annuals and perennial bunchgrasses did not provide sufficient fine fuels to carry large-scale wildfires. The bare spaces between widely spaced shrubs and the low fuel load of native annuals and perennial bunchgrasses generally prevented fire from spreading, so the fires that did burn were restricted to isolated patches. In *Artemisia arbuscula* communities, such as those that *Ivesia webberi* inhabits, the average fire return interval is greater than 100 years, due to natural lower productivity and fuel accumulations (Service 2013b, p. 24). However, beginning in the late 1800s, the widespread invasion of nonnative plant species, particularly annual grasses, has created a bed of continuous fine fuels across the sagebrush landscape in many areas (Service 2013b, p. 24). This increase in fine fuels created by nonnative, invasive plants has resulted in more frequent fires that burn larger areas and often burn at higher intensities.

Post-fire conditions further facilitate the invasion and establishment of nonnative, invasive plant species, thus creating a positive feedback loop between increased wildfire and the spread of these species (Service 2013b, p. 24). Ten of the 16 extant *I. webberi* populations have experienced wildfire since 1984 (Service 2013b, p. 24). Because *I. webberi* did not evolve with frequent fire and does not possess adaptations that would help it persist in a frequent-fire fire regime, wildfires are expected to have adverse population-level impacts on the species. In addition, increased wildfire frequency within the species' range results in increased wildfire suppression activities, which also may adversely affect *I. webberi* populations (Service 2013b, pp. 22, 24–25).

Other threats impacting *Ivesia webberi* populations include OHV use and roads, development, livestock grazing, and climate change (Service 2013b, pp. 25–31). OHV impacts to *I. webberi* populations have increased during the past 20 years as population growth and associated development have increased (Bergstrom 2009, p. 22), especially in the Reno urban area where 6 of the 16 populations occur. Ten of 16 extant *I. webberi* populations are adjacent to or intersected by dirt roads and have been impacted to some degree by road development and OHV use (Service 2013b, pp. 25–26). Roads cause habitat loss and degradation and when vehicles drive off existing roads and trails they can crush plants, compact soils, and provide a means for nonnative, invasive plant species to invade otherwise remote, intact habitats. The U.S. Forest Service concluded that a 2006 travel management plan for Peavine Mountain would benefit rare plant species, including *I. webberi*; however, designated roads open to all vehicles continue to bisect *I. webberi*

populations, and unauthorized OHV use remains high within *I. webberi* populations on Forest Service lands in the Reno urban area (Service 2013b, p. 26).

Development, which results in direct mortality, habitat loss, degradation, and fragmentation, has resulted in the extirpation of one *Ivesia webberi* population and the loss of a portion of another population (Service 2013x, p. x). Residential or commercial development is ongoing or planned at each of the four Nevada populations located on private lands. In addition, construction of a 120-kV overhead transmission line may impact two *I. webberi* populations located on Forest Service lands (Service 2013b, p. 26). Livestock grazing has the potential to result in negative effects to *I. webberi* due to trampling and substrate disturbance, but this situation is dependent on factors such as stocking rate and season of use. Two *I. webberi* populations occur in areas that are currently grazed by cattle, and another seven populations occur within vacant grazing allotments that could be reopened to grazing to alleviate grazing pressures on nearby allotments (Service 2013b, p. 29).

Climate change is likely to affect *Ivesia webberi*, although it is difficult to project specific effects. In the Great Basin, temperatures have risen 0.9 to 2.7 °F (0.5 to 1.5 °C) in the last 100 years and are projected to warm another 3.8 to 10.3 °F (2.1 to 5.7 °C) over the rest of the century (Service 2013b, p. 30). Under current climate change projections, we anticipate that future climatic conditions will favor the further spread of nonnative, invasive plants and increase the frequency, spatial extent, and severity of wildfires (Service 2013b, p. 30). Alteration of temperature and precipitation patterns as a result of

climate change also may result in decreased survivorship of *I. webberi* by causing physiological stress, altering phenology, and reducing reproduction or seedling establishment.

Because most of the habitat where the species is known to occur is located on Federal lands (69 percent of occupied habitat occurs on Forest Service lands, and 10 percent of occupied habitat occurs on BLM lands), *Ivesia webberi* receives some conservation protections resulting from Federal laws and the regulations and policies implementing those laws (e.g., the National Forest Management Act, Federal Land Policy Management Act, National Environmental Policy Act). *Ivesia webberi* receives special consideration on Federal lands because it is classified as a sensitive species by both the Forest Service and BLM (Service 2013b, pp. 3–4). The species also is classified as threatened with extinction and fully protected by the State of Nevada; removing or destroying *I. webberi* and other fully protected plants is prohibited except under special permit issued by the Nevada Division of Forestry (NDF 2013). *Ivesia webberi* is not listed as endangered or threatened under the California Endangered Species Act (CESA), but has a California Native Plant Society (CNPS) rare plant rank of 1B.1 (seriously threatened in California with over 80 percent of occurrences threatened and high degree and immediacy of threat (CNPS 2013). *Ivesia webberi* and other plants with a CNPS 1B rank must be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (CNPS 2013).

The Forest Service drafted a rangewide conservation strategy for *Ivesia webberi* to guide conservation actions for the species on Forest Service lands (Service 2013b, pp. 21–22). The conservation strategy, which was signed in 2010, will result in long-term benefits to *I. webberi* populations located on Forest Service lands (Bergstrom 2009, pp. 1–46). However, we expect that the landscape-level threats of nonnative, invasive plants and increased wildfire will continue to adversely affect *I. webberi* populations across the species' range (Service 2013b, p. 22).

### *Determination*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Ivesia webberi*. We considered the five factors identified in section 4(a)(1) of the Act in determining whether *I. webberi* meets the Act's definition of an endangered species (section 3(6)) or threatened species (section 3(20)). We find that *I. webberi* is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A). Present or threatened destruction, modification, or curtailment of its habitat or range include habitat loss and degradation due to nonnative, invasive plants, modified fire regime (increased wildfire), OHV use and roads, development, livestock grazing, and climate change. Of these, we consider the additive and synergistic effects of nonnative, invasive plants and increased wildfire to be the greatest threats to *I. webberi*.



Nonnative, invasive plant species such as *Bromus tectorum* and *Taeniatherum caput-medusae* can outcompete and displace *I. webberi* and result in increased frequency, spatial extent, and severity of wildfires because of the increase in fine fuels they produce. Twelve of the 16 extant populations have already been invaded by nonnative, invasive plant species and 10 of the 16 extant populations have been impacted by wildfire since 1984. Because there are currently no feasible means for controlling the spread of widespread nonnative, invasive plant species such as *B. tectorum* and *T. caput-medusae*, we expect that wildfires will continue to impact *I. webberi* populations. Increased temperatures and altered precipitation patterns due to climate change are projected to lead to further increases in wildfire and nonnative, invasive plants. OHV use and roads, development, and livestock grazing are having impacts on certain *I. webberi* populations.

We did not identify threats to *Ivesia webberi* due to overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease or predation (Factor C); or other natural or manmade factors affecting its continued existence (Factor E). Although regulatory mechanisms (Factor D) are in place that provide some protection to *I. webberi* and its habitat, these mechanisms do not completely alleviate all of the threats currently acting on the species.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” Available population information for *Ivesia*

*webberi* is not useful for determining trends because population estimates have been obtained by different observers employing a variety of means and levels of survey effort. Nonnative, invasive plant species, wildfire, and OHV activity are present impacts throughout the range of *I. webberi* and in some cases are found to be increasing for many years with data in particular related to increased recreational OHV activity over the past 20 years (Service 2013b, pp. 25–26) and increased wildfire and suppression activities over the past 30 years (Service 2013b, pp. 22, 24–25). Additionally, given current climate change projections, we anticipate that future climatic conditions will favor invasion by nonnative, invasive plant species, which will further contribute to increases in frequency, spatial extent, and severity of wildfires (Service 2013b, pp. 29–31). Based on the timeframe associated with the documented increased level of some threats over the past 30 years and the effects of climate change projections on these threats, we estimate the foreseeable future to be at least 30 years (i.e., 2043).

We find that *Ivesia webberi* is not presently in danger of extinction throughout all of its range, but that it is likely to become endangered throughout all of its range in the foreseeable future. We find that *I. webberi* is not presently in danger of extinction because the species is characterized by multiple populations spread across northeastern California and northwestern Nevada and that, in total, these populations provide sufficient redundancy (multiple populations distributed across the landscape), resiliency (capacity for a species to recover from periodic disturbance), and representation (range of variation found in a species) such that *I. webberi* is not at immediate risk of extinction. However, because multiple threats (nonnative, invasive plants, increased wildfire, OHV

use and roads, development, livestock grazing, and climate change) are impacting many of the *I. webberi* populations and because additive and synergistic effects due to nonnative, invasive plants, increased wildfire, and climate change are likely to continue and increase in the future, we find that *I. webberi* is likely to become an endangered species throughout all of its range in the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we propose listing *I. webberi* as a threatened species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range.

#### Significant Portion of the Range

Having determined that *Ivesia webberi* meets the Act's definition of a threatened species, we must next consider whether there are any significant portions of its range where *I. webberi* is presently in danger of extinction and thus meets the definition of an endangered species. In determining whether a species is endangered or threatened in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) endangered or threatened would serve no purpose. To identify only those portions that warrant further consideration, we determine whether substantial information indicates that: (1) The

portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is endangered or threatened in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is endangered or threatened there. Likewise, if the Service considers status first and determines that the species is not endangered or threatened in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is endangered or threatened there, the Service will specify that portion of the range as endangered or threatened under section 4(c)(1) of the Act.

The primary threats to *Ivesia webberi* occur throughout the species' range and are not restricted to or concentrated in any particular portion of that range. The primary

threats of nonnative, invasive plants and increased wildfire are impacting *I. webberi* populations throughout the California and Nevada portions of the species' range. Climate change also is acting on *I. webberi* throughout the species' range. Thus, we conclude that threats impacting *I. webberi* are not concentrated in certain areas and, thus, there are no significant portions of its range where the species should be classified as an endangered species. Accordingly, our proposal to list *I. webberi* as a threatened species applies throughout the species' entire range.

#### *Available Conservation Measures Resulting from Listing*

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act provides direction for cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop

and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If *Ivesia webberi* is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California and Nevada would be eligible for Federal funds to implement management actions that promote the protection or recovery of *I. webberi*. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although *Ivesia webberi* is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within *Ivesia webberi*'s habitat that may require conference or consultation or both as described in the preceding paragraph include land management actions that could result in impacts to soil characteristics or seedbank viability, pollinators or their habitat, and associated native vegetation community, and any other landscape-altering activities on Federal lands, such as: Reauthorization of grazing permits by the BLM and the U.S. Forest Service, issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers, construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission, and construction and maintenance of roads or highways by the Federal Highway Administration.



Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, apply to endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. These take prohibitions for endangered plant species are extended to threatened plant species under 50 CFR 17.71, except the take prohibitions do not extend to seeds of cultivated specimens, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container. Also, 50 CFR 17.71(b) authorizes Service and State conservation agency employees to remove and reduce to possession from Federal lands those threatened plant species covered by cooperative agreements under section 6(c) of the Act.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for

threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or to enhance the propagation or survival of the species.

Under section 4(d) of the ESA, the Secretary has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.71) for threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a “special rule” promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(2) of the ESA. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.71 and exceptions to those prohibitions in 50 CFR 17.62. We are not proposing to promulgate a special section 4(d) rule, and as a result, all of the section 9 prohibitions, including the “take” prohibitions, will apply to the *Ivesia webberi*.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

In addition to the take prohibitions that would be afforded to *Ivesia webberi* throughout its range in California and Nevada under section 9 of the Act, *I. webberi* is listed as threatened by the State of Nevada pursuant to Nevada Revised Statute (N.R.S.) 527.260–.300 and was added to the State list of fully protected species of native flora (Nevada Administrative Code 527.010) in 2004. Removing or destroying plants on the State’s fully protected list is prohibited except under special permit issued by the Nevada Division of Forestry (N.R.S. 527.270). *Ivesia webberi* is not listed by the State of California under the California Endangered Species Act (CESA), so removal or destruction of plants is not currently prohibited by State law in California. *Ivesia webberi* does have a California Native Plant Society rare plant rank of 1B.1 and must be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA) (see *Summary of Biological Status and Threats* section).

## **Required Determinations**

### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

## **References Cited**

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Authors**

The primary authors of this proposed rule are the staff members of the Service's Nevada Fish and Wildlife Office and Region 8 Regional Office.

## **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

2. Amend § 17.12 paragraph (h), by adding an entry for “*Ivesia webberi* (Webber’s ivesia)” to the List of Endangered and Threatened Plants in alphabetical order under “Flowering Plants” to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						

Flowering Plants

\* \* \* \* \*

<i>Ivesia webberi</i>	Webber's ivesia	U.S.A. (CA, NV)	Rosaceae	T		NA	NA
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Dated: July 23, 2013.

Signed:

Stephen Guertin,

Director, U.S. Fish and Wildlife Service.

~~[Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the *Ivesia*~~  
~~*webberi*]~~

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